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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/685,952	10/15/2003	Edward Anthony Bezek	CFLAY.00190	7945

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EXAMINER	
MAZZUCA JR, DOUGLAS	
ART UNIT	**PAPER NUMBER**
3726	

DATE MAILED: 12/30/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.	Applicant(s)	
	10/685,952	BEZEK ET AL.	
	Examiner	Art Unit	
	Douglas E. Mazzuca	3726	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on _15 October 2003_.

2a)☐ This action is **FINAL**. 2b)☒ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) _1-23_ is/are pending in the application.

4a) Of the above claim(s) _1-10_ is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) _11-23_ is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☒ The specification is objected to by the Examiner.

10)☒ The drawing(s) filed on _15 October 2003_ is/are: a)☒ accepted or b)☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☐ All b)☐ Some * c)☐ None of:

1.☐ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____.

3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) ☒ Notice of References Cited (PTO-892)

2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)

3) ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) Paper No(s)/Mail Date _11/12/2003_.

4) ☒ Interview Summary (PTO-413) Paper No(s)/Mail Date. _____ .

5) ☐ Notice of Informal Patent Application (PTO-152)

6) ☐ Other: _____.

DETAILED ACTION

Election/Restrictions

1. Restriction to one of the following inventions is required under 35 U.S.C. 121:

   I. Claims 1-10, drawn to a container and overcap, classified in class 220, subclass 780.

   II. Claims 11-23, drawn to a method of providing a close fit between a molded container and a molded overcap, classified in class 29, subclass 453.

The inventions are distinct, each from the other because of the following reasons:

2. Inventions of Group I and Group II are related as process of making and product made. The inventions are distinct if either or both of the following can be shown: (1) that the process as claimed can be used to make other and materially different product or (2) that the product as claimed can be made by another and materially different process (MPEP § 806.05(f)). In the instant case the overcap of the product claims does not require a smaller amount of tolerance than the container in the molding process and does not require a manufacturing tolerance greater than the manufacturing tolerance than the container rim. The overcap and container rim can be manufactured to have tolerances which allow the overcap to seal the container. Further, the method does not require the manufacture of a container and overcap, but merely the design for a container and overcap.

3. Because these inventions are distinct for the reasons given above and have acquired a separate status in the art as shown by their different classification, restriction for examination purposes as indicated is proper.

4. During a telephone conversation with Chad Walter on April 5, 2005 and confirmed again on December 1, 2005 a provisional election was made with traverse to prosecute the invention of Group II, claims 11-223. Affirmation of this election must be made by applicant in replying to this Office action. Claims 1-10 have been withdrawn from further consideration by the examiner, 37 CFR 1.142(b), as being drawn to a non-elected invention.

Applicant is reminded that upon the cancellation of claims to a non-elected invention, the inventorship must be amended in compliance with 37 CFR 1.48(b) if one or more of the currently named inventors is no longer an inventor of at least one claim remaining in the application. Any amendment of inventorship must be accompanied by a request under 37 CFR 1.48(b) and by the fee required under 37 CFR 1.17(i).

Specification

1. Applicant is reminded of the proper language and format for an abstract of the disclosure.

The abstract should be in narrative form and generally limited to a single paragraph on a separate sheet within the **range of 50 to 150 words**. It is important that the abstract not exceed 150 words in length since the space provided for the abstract on the computer tape used by the printer is limited. The form and legal phraseology often used in patent claims, such as "means" and "said," should be avoided. The abstract should describe the disclosure sufficiently to assist readers in deciding whether there is a need for consulting the full patent text for details.

The language should be clear and concise and should not repeat information given in the title. It should avoid using phrases which can be implied, such as, "The disclosure concerns," "The disclosure defined by this invention," "The disclosure describes," etc.

Claim Objections

2. Claim 12 is objected to under 37 CFR 1.75(c), as being of improper dependent form for failing to further limit the subject matter of a previous claim. Claim 12 requires the molding of both the cap and the container; yet this is clearly stated in the preamble of claim 11, making claim 12 an improper dependant claim. Applicant is required to cancel the claim(s), or amend the claim(s) to place the claim(s) in proper dependent form, or rewrite the claim(s) in independent form.

3. Claims 21 and 22 are objected to under 37 CFR 1.75(c), as being of improper dependent form for failing to further limit the subject matter of a previous claim. Claims 21 and 22 are exact duplicates of claims 13 and 14 and all depend on claim 11. Applicant is required to cancel the claim(s), or amend the claim(s) to place the claim(s) in proper dependent form, or rewrite the claim(s) in independent form.

Claim Rejections - 35 USC § 112

4. The following is a quotation of the second paragraph of 35 U.S.C. 112:

> The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

5. Claims 11-23 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. Claims 11 and 22 both state the limitation of $T_{CAP} > T_{CNTR}$. However, in the specification, and previously mentioned in the claims **("where the overcap has a smaller amount of tolerance in the molding process than does the container")**, T_{CAP} is clearly defined to be smaller in length then T_{CNTR}. The limitation defined in the specification contradicts the limitation provided in the claims.

Claim Rejections - 35 USC § 102

6. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

> A person shall be entitled to a patent unless –
>
> (b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

7. Claims 11-12, 15, 18 and 19 are rejected under 35 U.S.C. 102(b) as being anticipated by Crisci (US Patent No. 4,209,107). Concerning claim 11, Crisci discloses:

A method of providing a close fit (**column 3 lines 16-20**) between a molded container (**column 3 lines 61-62**) and a molded overcap (**column 2 lines 65-68**), the method comprising the steps of: designing a container (**figure 1, 10**), such that said container has an opening surrounded by a rim (**figures 3 and 4, top end of 18**), said rim having an upper portion that is rounded (**60**) and a lower portion that is flat in cross-section (**30**), wherein said container is designed to have a nominal outer diameter at a largest circumference of said rim with a manufacturing tolerance; designing a snap-on overcap (**figures 4 and 5, 14**) to removably snap over said rim of said container, wherein a base of said overcap is sized to cover said opening (**column 1 lines 11-16**), said overcap further comprising a flange extending essentially perpendicularly from said base (**figures 2 and 4, 44**), an inner surface of said flange containing a circumferential ridge having a peak (**tip of 42**), a flattened face (**42**) of said ridge being configured to seat against said lower portion of said rim of said container (**figure 4, 34A**), said overcap having a manufacturing tolerance.

8. In regards to claims 12, 18 and 19, Crisci discloses molding both the container (**column 3 lines 16-20)** and the overcap (**column 2 lines 65-68).** Furthermore, Crisci also discloses molding the overcap of low-density polyethylene (**column 3 lines 28-30**) and the container to be made of high-density polyethylene (**column 6 lines 7-8**).

9. Regarding claim 15, Crisci discloses a surface-to-surface contact between the lower portion of the rim and the face of the ridge of the overcap (**figure 4, 34A**).

Claim Rejections - 35 USC § 103

10. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

11. Claims 13 and 21 are rejected under 35 U.S.C. 103(a) as being unpatentable over Crisci (US Patent No. 4,409,107) in view of Freek et al. (US Patent No. 6,047,851). Crisci discloses all of the claimed information, yet fails to describe a blow molding technique. Freek et al. teach a container designed to be blow molded (**column 1 lines 11-12, lines 20-24; column 3 lines 49-50**). Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to combine the container of Crisci with the blow molding technique of Freek et al. in order to facilitate a more efficient and faster way of making the containers while at the same time having reasonable control over manufacturing tolerances.

12. Claims 14 and 22 are rejected under 35 U.S.C. 103(a) as being unpatentable over Crisci (US Patent No. 4,409,107) in view of King (US Patent No. 4,691,501). Crisci discloses all of the claimed information, yet fails to describe the cap being made through an injection molding process. King teaches an overcap designed to be injection molded with polyethylene (**column 5 lines 62-63**). Therefore it would have been obvious to one of ordinary skill in the art at the time the invention was made to combine the container of Crisci with the injection molding technique of King in order to have

significant control of the dimensions of the overcap. This provides for the overcap to be manufactured very precisely with a low manufacturing tolerance.

13. Claims 16 and 17 are rejected under 35 U.S.C. 103(a) as being unpatentable over Crisci (US Patent No. 4,409,107). In regard to claim 16, Crisci discloses the nominal inner diameter of the overcap at the peak equal to the nominal outer diameter of the rim of the container (**figure 4, 62**). However, Crisci does not disclose a relationship between the overcap and the container. However, it would have been obvious to claim a manufacturing tolerance for the components of the container for container sealing and tightening purposes so as to make the container air-tight when overcap is properly placed on container. It would have been obvious to one of ordinary skill in the art at the time of the invention, to have made the prior art at the claimed ranges, since it has been held that where the general conditions of a claim are disclosed in the prior art, discovering the optimum or workable ranges involves only routine skill in the art. *In re Aller*, 105 USPQ 233 (Refer to MPEP 2144.05)

14. In regard to claim 17, Crisci discloses the nominal inner diameter of the overcap at locations away from the peak to be greater than the nominal outer diameter of the rim of the container (**figure 4, horizontal distance from 48 to 62**). However, Crisci does not disclose a relationship between the overcap and the container. However, it would have been obvious to claim a manufacturing tolerance for the components of the container for container sealing and tightening purposes so as to make the container air-tight when overcap is properly placed on container. It would have been obvious to one of ordinary skill in the art at the time of the invention, to have made the prior art at the

claimed ranges, since it has been held that where the general conditions of a claim are disclosed in the prior art, discovering the optimum or workable ranges involves only routine skill in the art. *In re Aller*, 105 USPQ 233 (Refer to MPEP 2144.05)

15. Claim 20 is rejected under 35 U.S.C. 103(a) as being unpatentable over Crisci (US Patent No. 4,409,107). Crisci discloses all of the claimed information as stated above, yet fails to describe how to determine tolerance, overlap, and nominal inner diameters of the cap. However, it would have been obvious to not only have claimed a manufacturing tolerance for the components of the container, but to have determined a nominal inner diameter of the overcap in several locations. Determining these dimensions is necessary for container sealing and tightening purposes so as to not only make the container air-tight, but also make it feasible to put on and remove the overcap. It would have been obvious to one of ordinary skill in the art at the time of the invention, to have made the prior art at the claimed ranges, since it has been held that where the general conditions of a claim are disclosed in the prior art, discovering the optimum or workable ranges involves only routine skill in the art. *In re Aller*, 105 USPQ 233 (Refer to MPEP 2144.05)

16. Claim 23 is rejected under 35 U.S.C. 103(a) as being unpatentable over Crisci (US Patent No. 4,409,107) in view of Craftech Industries. Crisci discloses all of the information, as shown above, but fails to show polyethylene being a low-friction plastic. However, this information is well known in the art and can be seen through the published information by Craftech Industries, Inc. that polyethylene is indeed a low-friction material. (<u>www.craftechind.com/material.htm</u>, published march 1, 2000).

Conclusion

17. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Mygatt (US Patent No. 5,592,766), McLaughlin (US Patent No. 3,077,284).

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Douglas E. Mazzuca whose telephone number is (571)272-7813. The examiner can normally be reached on 7:30AM-4PM Mon-Fri.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Marc Jimenez can be reached on (571)272-4530. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Douglas Mazzuca
December 20,2005

DEM

MARC JIMENEZ
PRIMARY EXAMINER
12-21-05